UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 21-2389 PA (GJSx)	Date	December 7, 2021
Title	Jay Martel v. Writers Guild of America West Inc. et al		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court is a Motion for Class Certification filed by plaintiff Jay Martel ("Plaintiff"). (Docket No. 43.) Plaintiff seeks to represent a class of employees who are members of defendant Writers Guild of America West, Inc. ("WGA") and worked for defendants Viacom Media Networks, Comedy Partners LLC, Central Productions LLC, LRF Development Company, Inc., and Hello Doggie, Inc. ("Employer Defendants") (collectively, "Defendants"). The matter is fully briefed. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument.

I. Background

Plaintiff brings this class action suit against Defendants for breach of a collective bargaining agreement and violation of the duty of fair representation in reaching an inadequate settlement agreement. Plaintiff is a writer and producer who served as showrunner for "Key & Peele." Under the terms of the relevant collective bargaining agreements ("CBAs"), Plaintiff believes the Employer Defendants underpaid writers for the use of their work in ad-supported video-on-demand services. In or about October 2018, WGA began an arbitration against Employer Defendants for this conduct. Defendants then entered into a confidential settlement agreement, extinguishing claims in exchange for a single lump payment. Plaintiff alleges that the settlement agreement represents an underpayment and that Defendants conspired together in reaching its terms.

Plaintiff asserts two claims: (1) against Employer Defendants for breach of the CBAs and (2) against WGA for breaching its statutory duty of fair representation owed to its members. Plaintiff now moves for certification of the following class:

> All WGA members, their successors in interest, assigns, heirs, executors, trustees, and administrators, whose claims for streaming

> residuals due from Viacom Media Networks, Comedy Partners LLC, Central Productions LLC, LRF Development Company, Inc., and/or Hello Doggie, Inc., were settled and released in the February 3, 2020 settlement agreement negotiated by the WGA.

(Mot. 2.)

II. Legal Standard

The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Califano v. Yamasaki, 442 U.S. 682, 700-01 (1979). To obtain class certification, a plaintiff must satisfy the four requirements of Federal Rule of Civil Procedure 23(a) and the requirements of one of the Rule 23(b) subdivisions. See Zinser v. Accufix Rsch. Inst., Inc., 253 F.3d 1180, 1186 (9th Cir. 2001). Rule 23(a) requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). "[A]ctual, not presumed, conformance with Rule 23(a) remains . . . indispensable." Gen. Tel. Co. of the Sw. v. Falcon ("Falcon"), 457 U.S. 147, 160, 102 S. Ct. 2364, 2372, 72 L. Ed. 2d 740 (1982). Essentially, "Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349, 131 S. Ct. 2541, 2550, 180 L. Ed. 2d 374 (2011).

"Parties seeking class certification bear the burden of satisfying each of the four requirements of Rule 23(a) of the Federal Rules of Civil Procedure and at least one of the requirements of Rule 23(b)." Davidson v. O'Reilly Auto Enters., LLC, 968 F.3d 955, 967 (9th Cir. 2020). Here, Plaintiffs seek class certification under Rule 23(b)(3), which requires Plaintiffs to show that (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The Ninth Circuit requires a district court to "find by a preponderance of the evidence that the plaintiff" has satisfied Rule 23's certification requirements. Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 993 F.3d 774, 784 (9th Cir. 2021); see also id. at 785 ("[E]mploying a preponderance of the evidence standard supports the district court's role as the gatekeeper of Rule 23's requirements. It best accords with the Supreme Court's warning that class certification is 'proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.'" (quoting Wal-Mart, 564 U.S. at 349-51, 131 S. Ct. at 2551-52)). Rule 23 "provides district courts with broad discretion to determine whether a

class should be certified, and to revisit that certification throughout the legal proceedings before the court." Armstrong v. Davis, 275 F.3d 849, 871 n.28 (9th Cir. 2001).

"[C]ertification is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.'" Wal-Mart, 564 U.S. at 350-51, 131 S. Ct. at 2551 (quoting Falcon, 457 U.S. at 161, 102 S. Ct. at 2372). "'Frequently that rigorous analysis will entail some overlap with the merits of the plaintiff's underlying claim' because 'the class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action.'" Davidson, 968 F.3d at 967 (quoting Wal-Mart, 564 U.S. at 351, 131 S. Ct. at 2551-52). "Courts must resolve all factual and legal disputes relevant to class certification, even if doing so overlaps with the merits." Olean Wholesale Grocery Coop., 993 F.3d at 784 (citing Wal-Mart, 564 U.S. at 351, 131 S. Ct. at 2551-52). Although resolving class certification may overlap with the merits, "'[w]hether class members could actually prevail on the merits of their claims' is not a proper inquiry in determining the preliminary question 'whether common questions exist.'" Stockwell v. City & Cnty. of San Francisco, 749 F.3d 1107, 1112 (9th Cir. 2014) (quoting Ellis v. Costco Wholesale Corp., 657 F.3d 970, 983 n.8 (9th Cir. 2011)).

III. Analysis

The Court will briefly identify the legal standard applicable to the relevant Rule 23(a) and 23(b)(3) requirements for certification before analyzing the applicable factors as they apply to the class.

A. Numerosity

A proposed class meets Rule 23(a)'s numerosity requirement where the class "is so numerous that joinder of all members is impracticable." Fed R. Civ. P. 23(a)(1). "No exact numerical cut-off is required; rather, the specific facts of each case must be considered." In re Cooper Cos. Sec. Litig., 254 F.R.D. 628, 634 (C.D. Cal. 2009) (citing General Tel. Co. of Nw., Inc. v. E.E.O.C., 446 U.S. 318, 330 (1980)). Courts have routinely found numerosity where the putative class contains forty or more members. See id. (citing Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995)).

B. Commonality

The commonality requirement of Rule 23(a) is met if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "[C]ommonality only requires a single significant question of law or fact." Mazza v. Am. Honda Motor Co., Inc., 666 F.3d 581, 589

(9th Cir. 2012). Plaintiff must show the putative class members' claims "'depend upon a common contention' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] with one stroke.'" Id. at 588 (citing Wal-Mart, 564 U.S. at 350, 131 S. Ct. at 2551). "'What matters to class certification . . . is not the raising of common 'questions' – even in droves – but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.'" Wal-Mart, 564 U.S. at 350, 131 S. Ct. at 2551 (citation omitted). "'Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.'" Id. (citation omitted).

C. Typicality

"The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998).

D. Adequacy of Representation

Rule 23(a) requires that the representative parties be able to "fairly and adequately protect the interests of the class." Representation is adequate if the named plaintiff (1) does "not have conflicts of interest with the proposed class" and (2) the class is "represented by qualified and competent counsel." Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 614 (9th Cir. 2010) rev'd on other grounds, 564 U.S. 338, 131 S. Ct. 2541.

E. Predominance

Under Rule 23(b)(3), the party seeking class certification must show that common questions of law or fact predominate over questions affecting individual members. Fed. R. Civ. P. 23(b)(3). The Rule 23(b)(3) predominance inquiry asks whether a proposed class is "sufficiently cohesive to warrant adjudication by representation." In re Wells Fargo Home Mortg. Overtime Pay Litig., 571 F.3d 953, 957 (9th Cir. 2009). This inquiry focuses on "the relationship between common and individual issues." Id. This standard is "far more demanding" than the commonality requirement under Rule 23(b). Amchen Prods., Inc. v. Windsor, 521 U.S. 591, 623-24 & n.18 (1997).

"Rule 23(b)(3) requires a district court to formulate some prediction as to how specific issues will play out in order to determine whether common or individual issues predominate."

Dukes, 603 F.3d at 593 (citation and quotation marks omitted). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Torres v. Nutrisystem, 289 F.R.D. 587, 594 (C.D. Cal. 2013). However, if a predominant issue in a case requires "the separate adjudication of each class members' individual claim or defense, a Rule 23(b)(3) action would be inappropriate." Zinser, 253 F.3d at 1189 (quotations and citation omitted).

F. Superiority

The Rule 23(b)(3) superiority inquiry requires determination of "whether the objectives of the particular class action procedure will be achieved in the particular case." Hanlon, 150 F.3d at 1023. Notably, the class action method is considered to be superior if "classwide litigation of common issues will reduce litigation costs and promote greater efficiency." Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996).

G. Certification of Plaintiff's Proposed Class

The Court finds that Plaintiff's claims are atypical of the proposed class due to a unique statute of limitations defense. "[C]lass certification should not be granted if there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it." Hanon, 976 F.2d at 508. "A cause of action accrues when the plaintiff knew, or should have known, of the defendant's wrongdoing and can successfully maintain a suit in the district court." Allen v. United Food & Com. Workers Int'l Union, ALF-CIO, CLC, 43 F.3d 424, 427 (9th Cir. 1994) (citing Acri v. Int'l Ass'n of Machinists & Aerospace Workers, 781 F.2d 1393, 1396 (9th Cir. 1986), cert. denied, 479 U.S. 816 (1986)). Here, Plaintiff's claims are subject to a six-month statute of limitations.[1/] See DelCostello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 169, 103 S. Ct. 2281, 2293, 76 L. Ed. 2d 476 (1983). Anticipating the statute of limitations defense, Plaintiff pleads that the doctrine of fraudulent concealment tolls the statute of limitations for all class members and makes their claims timely. (See Compl., Docket No. 1.) Plaintiff's claims are typical of others in that the statute of limitations defense and equitable tolling doctrine might apply.

[1/] WGA contends that the Court should dismiss Plaintiff's claim for violation of the duty of fair representation as untimely on its face. (WGA Opp'n 7-8.) "'[W]hether class members could actually prevail on the merits of their claims' is not a proper inquiry in determining the preliminary question 'whether common questions exist.'" Stockwell, 749 F.3d at 1112 (quoting Ellis, 657 F.3d at 983 n.8).

Plaintiff's claims appear atypical, however, because he possessed information other class members did not. "Courts have generally held that the section 10(b) limitations period begins to run when the employee 'discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged [violation].'" Galindo v. Stoody Co., 793 F.2d 1502, 1509 (9th Cir. 1986) (quoting Howard v. Lockheed-Georgia Co., 742 F.2d 612, 614 (11th Cir. 1984). Further, fraudulent concealment only applies where defendants "fraudulently concealed the existence of [the] cause of action in such a way that . . . [P]laintiff, acting as a reasonable person, did not know if its existence." Hexcel Corp. v. Ineos Polymers, Inc., 681 F.3d 1055, 1060 (9th Cir. 2012). Here, all class members received notice on July 17, 2020 of the settlement agreement, which may or may not trigger accrual.[2/] (See Decl. of Leila B. Azari ("Azari Decl.") ¶ 9 & Ex. C, Docket Nos. 54-1, 54-4.) On July 22, 2020, Rich Talarico, the "Show Captain" for Key & Peele, included Plaintiff and others on an email that stated a "wish to dispute and appeal the case on the grounds of insufficient representation." (Id.) Not all class members received that email, which may establish a different date of accrual or foreclose that subclass's use of the fraudulent concealment doctrine.

Plaintiff contends that any additional information he may have possessed does not make his claims atypical. Plaintiff argues that "WGA does not bother to explain why Plaintiff being copied on emails led him to be 'amply aware' or why even if he was, those 'meritless' concerns somehow put him on notice of the challenged conduct." (Reply 9, Docket No. 57.) However, the July 22, 2020 email expressly called WGA's conduct into question. While the Court does not resolve here how the email alters analysis, it is clear that unlike other class members, Plaintiff will have to combat this email's effect. Contrary to Plaintiff's position that "all putative Class Members received the same communication and would therefore not be subject to . . . individualized analysis," this email shows Plaintiff and a subset received different communications and that individualized analysis is necessary. (Reply 10.) As such, Plaintiff's claim is not typical and certification is inappropriate. See Quezada v. Loan Ctr. of Cal., Inc., No. CIV. 2:08-00177 WBS KJM, 2009 WL 5113506, at *9 (E.D. Cal. Dec. 18, 2009) ("[D]istrict courts have found that a putative class representative's claims fail to meet the typicality requirement when they are subject to a statute of limitations defense that differs from other class members and would become a significant focus of the litigation.").

[2/] Plaintiff filed evidentiary objections to five segments of the Declaration of Leila B. Azari. (See Evidentiary Objections, Docket No. 58.) These objections are boilerplate, providing no analysis beyond identifying the complained of passages and citing to the Federal Rules of Evidence. Furthermore, the evidence objected to did not impact any portion of this Court's ruling. As such, the Court overrules the evidentiary objections.

For similar reasons, the Court also finds individual issues predominate. The limitations period starts to run when the employee, with reasonable diligence, should have discovered the acts forming the violation. See Galindo, 793 F.2d at 1509. Thus, "each [class member] must put forth evidence from which a jury could reasonably conclude that he did not know, or have reason to know through the exercise of due diligence, of the predicate acts for this cause of action." Garrish v. United Auto., Aerospace, & Agric. Implement Workers of Am., 149 F. Supp. 2d 326, 333 (E.D. Mich. 2001). Here, WGA submitted evidence suggesting Talarico spoke with several class members about his concerns over the settlement agreement. (See Azari Decl. ¶ 14, Ex. I.) As such, there could be a wide range of accrual dates, and individualized analysis of each class member is necessary.

Plaintiff argues that under Ninth Circuit precedent, this sort of individualized inquiry on the statute of limitations does not defeat predominance. (See Reply 5 (citing Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 485 (C.D. Cal. 2012)).) In those situations, however, "predominance [was] not defeated because the doctrines used by plaintiffs for 'tolling the statute of limitations,' such as the doctrine of fraudulent concealment, involve[d] proof 'common to the defendants,' namely 'the act of concealing' defendant's wrong." Tait, 289 F.R.D. at 486. Here, Plaintiff similarly seeks to rely upon fraudulent concealment for tolling. But Plaintiff has not shown how any proof common to Defendants would toll the statute of limitations once Talarico communicated with class members. If Talarico alerted class members of a potential violation of the duty of fair representation, the doctrine of fraudulent concealment may not apply to their claims. As such, the Court finds that Plaintiff has not demonstrated by a preponderance of the evidence that common issues predominate.

Conclusion

For the foregoing reasons, the Court denies Plaintiff's Motion for Class Certification.

IT IS SO ORDERED.